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International Film Co-Production Tax and Subsidy Mechanisms

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* This Article examines international co-production tax and subsidy issues mechanisms from the American film producer's perspective.

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I
Introduction to The International Co-Production: *The Crying Game*

The Crying Game[1] opens on a black British soldier being kidnapped by the Irish Republican Army in Northern Ireland. During the course of the film, one of the soldier's IRA guards befriends him and is later told he must kill the soldier. After the soldier is accidentally killed, the story switches to London where the IRA member seeks out the British soldier's exotic black "girlfriend." The film's themes of terrorism, transsexualism and interracial relationships[2] distinguished it from the typical Hollywood stream of erotic thrillers and techno-splatter. Unfortunately, these themes also made conventional financing difficult.

After being rejected by virtually every Hollywood studio, *The Crying Game*'s director, Neil Jordan, and producer, Stephen Woolley, concentrated their search for financial backing on European organizations. But even the British Television Company, Channel Four, turned the project down seventeen times. "It finally got to where I even threatened to immolate myself in the Channel Four foyer," Woolley said.[3] Eventually Channel Four agreed to pay 35% of the £2.6 million cost,[4] with the rest of the money coming from Woolley's Palace Productions, the Japanese Nippon Development and Finance Company[5] and British Screen Finance.[6] Jordan and Woolley also presold the rights to four European countries: France, Germany, Spain and Italy. In addition, the cast and crew deferred portions of their fees.[7] When Palace Productions went into bankruptcy mid-way through the shoot, Woolley partially financed the film through his personal credit cards.[8]

In the United States, *The Crying Game* received six Oscar nominations and collected the award for original screenplay. The film has

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1. (Palace Pictures, in co-production with Eurotrustees, British Screen Finance, Channel Four, and Nippon Film Development and Finance Company (NDF) 1992).

2. The director of *The Crying Game* has called it a "political/racial/sexual fairy tale." Clifford Terry, *A Director's Game*, CHIC. TRIB., Dec. 13, 1992, Arts, at C6.

3. Linda Joffee, *How 'The Crying Game' Was Made*, CHRISTIAN SCI. MONITOR, Mar. 26, 1993, The Arts, at 12.

4. John Dugdale, *Screen Break with Tradition*, SUNDAY TIMES, Apr. 4, 1993.

5. NDF is a film-financing and brokerage company backed by a consortium of Japanese investors led by Nippon Herald Films group. *See also infra* note 100.

6. British Screen is a private motion picture investment company aided by government grants.

7. Terry, *supra* note 2.

8. Michael Dwyer, *Things Changed—For the Better*, THE IRISH TIMES, Dec. 24, 1993, Sound & Vision, at 13.

grossed $63 million at U.S. box offices, making it the most successful independently financed film of recent times.[9] However, had international co-production arrangements and national subsidies not been available, the Irish-British co-production of *The Crying Game* might not have made it to the screen.

Co-production agreements allow two or more countries to jointly produce films and television programming. Those using co-production agreements can gain tax and national production subsidies by sharing the production with a foreign partner. An intermingling of treaties, regulations and contractual arrangements may form the legal basis of co-production agreements.

In genuine co-productions, the film industries and governments of the countries involved make contributions to the actual production of the work in proportion to the share of the budget originating from the sponsor country. For example, if French co-production terms are met, perhaps by involving a French producer, an international co-production would be eligible for subsidies from the Centre National de la Cinematographie (CNC).[10] The term co-production also subsumes co-financing deals, wherein the financing of the production is shared among countries, but the production work is not divided proportionally. It also includes "twinning," whereby two countries agree that two equivalent national productions should be treated as co-productions, thus qualifying the film for financial benefits available in both countries.

Although this Article discusses international film co-production mechanisms, it culminates in a discussion of the Council of Europe's proposal to standardize co-production rules and arrangements. This proposal is significant, since Europe is the center of international co-productions. As of December 1992, 192 of the European films in production or later[11] (32% of the category) had been organized as international co-productions. The United Kingdom organized 33% of its fifty-seven "production or later" films as international co-productions.[12] French producers were in the lead with thirty-seven out of

9. Joffee, *supra* note 3.

10. The French government's CNC runs a subsidy system with "revenues from three main sources: an 11% tax on cinema tickets, taxes on television companies and special penalty taxes on pornographic films." *Movies Eclipse Films*, THE ECONOMIST, Feb. 5, 1994, Arts, Books & Sports, at 89.

11. "In production or later" describes films that are in production, are in post-production, or have been completed and are awaiting release.

12. *Europe's 2,300 Features: 600 are in Production, 63% Backed by Subsidies*, SCREEN FIN., Feb. 10, 1993 [hereinafter *Europe's 2,300 Features*].

ninety-five films (or 39%) produced as international co-productions.[13] France's main minority partner was Italy. Because the French government provides significant subsidies, French producers are also the favored minority partners for films made by producers of other countries.[14]

European countries view co-production as a means to compete with American domination of the motion picture arena, and as a means to support and invigorate national cultural film production. As of July 1989, the United States film and television industry had a $2.5 billion trade surplus, with one half of world-wide revenues coming from European sales.[15] In 1990, United States films comprised over 77% of the European Community motion picture market,[16] despite the fact that the European Community generated 474 films and the United States produced only 438 films that year.[17] The United States' share of films in the European market continues to grow relentlessly, while the indigenous films' share of European markets is on the decline in most European countries.[18] In 1990, American films were responsible for 58% of box office takings in France, 85% in Germany and 89% in Britain.[19]

These countries, however, also perceive co-productions as a vehicle for collaboration with Americans who excel in technical and creative expertise. Consequently, independent American producers should investigate opportunities for utilizing co-production resources to produce films. The allure of co-productions for many American companies is financial, since co-productions are economic partnerships that spread the risk of film production. Americans, however, should also focus on the rewards of cultural cooperation. In addition to the tax breaks, subsidies and the quota-avoidance schemes co-production arrangements might offer, these arrangements could also establish long-term relationships with foreign partners. In turn, co-production may produce alternatives to American major studio fare,

13. *Id.*

14. *Id.*

15. Paul Presburger & Michael R. Tyler, *Television Without Frontiers: Opportunity and Debate Created by the New European Community Directive*, 13 HASTINGS INT'L & COMP. L. REV. 495, 501-02 (1990).

16. *Film Production: Signs of European Recovery?*, Second Annual Survey of International Film Production, SCREEN DIG., Apr. 1992, at 5.

17. *Id.* at 3. France and Italy are the biggest producers in 1990, with 146 and 119 films produced, respectively.

18. *Id.* at 6.

19. *EC Don't Block the Blockbuster—Arguments Against Sanctions for US Films*, GUARDIAN, June 24, 1992, at 38.

re-invigorate independent film production[20] and open cultural as well as economic doors.

This Article discusses current international co-production issues. Part II describes tax and non-tax issues for international co-productions. Part III delineates specific national tax benefit and subsidy schemes, and reviews the proposed European Convention on Cinematographic Co-Production.

II
Tax and Non-Tax Issues for International Co-Productions

Governments of many countries offer monetary incentives to encourage private financing of films. In these countries, national film industries are perceived as fostering and promoting national cultures, which encourages the governments' involvement and financial support. Government programs may involve direct grants toward the budget of a film, such as those awarded by the European Community's Media Fund;[21] strict quota controls on content for "national" television productions, such as those existing in the United Kingdom, Canada, France and Italy; and tax shelter financing for "national" films. Eurimages, the special Media Fund aimed at promoting transnational co-production ventures and their international distribution, provides interest-free loans of up to 20% of the budget, repayable from the producer's share of net profit.[22]

In Europe, public subsidies and television financing provide major support for the film industry. As of December 1992, 63% of the

20. The number of U.S. independent productions seems to be declining as the production expenditures of major studios increase.

21. Projects supported by the Media Fund include: (1) The European Film Distribution Office, which supplies loans of up to 50% of distribution costs for low-budget European feature films, provided the films are distributed in at least three EC countries; (2) Broadcasting Across the Barrier of European Languages (BABEL), which provides financial support for dubbing and subtitling; (3) Euro-AIM, which offers services, including marketing and promotions, to independent producers; (4) Media investment club for advanced technologies, which unites industrialists, broadcasters and financial institutions; (5) European Script Fund, which supports the pre-production phase of select ideas for features and television productions; (6) Financial and structural support for European cartoon production; (7) European audiovisual entrepreneurs (EAVE), which organizes training seminars for young producers with an emphasis on the acquisition of management skills and entrepreneurial conception; (8) Media Venture, including a guarantee and financing fund for production; and (9) EVE, concerned with the circulation of videocassettes. MATTEO MAGGIORE, AUDIOVISUAL PRODUCTION IN THE SINGLE MARKET 64 (1989).

22. Giovanni Peddi, Comment, *Eurimages: An Introduction to Co-Production Financing in the European Community,* 1 ENT. LAW. 31 (1992). The Management Committee may allow exceptions to this maximum amount. *Id.* at 32.

European films in production or later (380 out of 603 films) had public production subsidies.[23] Fifty percent of films in production or later (302 of the 603 films) received financial support from television companies in the form of pre-sales of television rights and equity.[24] In many cases, television channels provided backing either as part of a subsidy-plus television agreement with governments or as a result of direct government regulation.[25]

International co-productions appeal to American producers for many reasons, including the fact that foreign tax shelter financing is no longer available in the United States. The U.S. Tax Reform Act of 1986 decimated tax sheltering investments for film financing by placing limitations on tax benefits and losses. These limitations, which reduce profit motive, include regulation of how much investment can be at-risk, regulation of partnership allocations and limitations on the amount of passive activity losses and start-up costs that can be deducted.[26] In addition, the U.S. Tax Reform Act of 1986 repealed the Investment Tax Credit for film ventures and eliminated ACRS,[27] thereby diminishing most tax incentives for investing in film production. Because U.S. film and television production is perceived as a commercial undertaking, it receives no government regulation, subsidies or tax breaks. The remaining incentives for investment in production include the "glamour" lure of the industry, and the perceived commercial value of feature film packages.

23. *Europe's 2,300 features*, *supra* note 12.

24. *Id.*

25. *Id.*

26. These limitations include: (1) the requirement that expenses are deductible only if incurred in a trade or business or other activity for profit; (2) the judicially created doctrine that courts may characterize a transaction according to its substance rather than its form; (3) the IRC § 465 at-risk rules, which limit the deductibility of losses to the amount an investor has at risk in an activity; (4) the requirement that partnership income and deductions be allocated among partners in a way that has substantial economic effect; (5) limitations on the current deductibility of partnership organization and syndication fees; (6) the rule that start-up expenditures cannot be deducted currently but may, at the election of the taxpayer, be deducted ratably over a period of at least 60 months; (7) IRC § 469 rules governing passive activity losses, which are designed to prevent the offsetting of non-passive income, at least until disposition of the taxpayer's interest in the activity; (8) the requirement that publicly traded partnerships be taxed as corporations (taxed at both the partnership and partner level, subject to grandfathering rules); and (9) various limitations on corporations that invest in tax shelters, including the rules governing estimated taxes and net operating expenses (corporate tax shelter investors). SCHUYLER MOORE, THE FILMED ENTERTAINMENT INDUSTRY 1351 (1990).

27. ACRS (Accelerated Cost Recovery System) is a depreciation system in which the cost of a fixed asset is written off for tax purposes at a rate faster than straight line depreciation.

To complete a film's financial success story, a film must also air on television. Co-production arrangements may ensure American companies' ability to exploit the situation presented by the recent 50% European broadcast quota set out in Article 6 of the EC Directive on Broadcasting.[28] The Directive and the European Convention on Transfrontier Television[29] require that broadcasters reserve majority proportions of transmission time for European works, excluding the time appointed to news, sports events, games, advertising and teletext services. The European broadcaster's informational, educational, cultural and entertainment programs are primarily dedicated to enhancing Europe's "heritage."[30] To qualify as a European content production, the majority co-producer must be European, and the production must be "mainly made with authors and workers residing in [the Community]."[31] The film will qualify as fully European if these prerequisites are met.[32] Films that meet these criteria will have substantially higher value due to their increased attractiveness to commercial broadcasters, with increased pre-sales, greater sources of funding and higher residuals. By entering co-productions, American producers could attempt to take advantage of the per country funding subsidies used to finance productions meeting certain quota or other requirements. The subsidies range from tax breaks to loans.[33]

Co-production arrangements also could defeat other protectionist schemes designed to safeguard national markets from being flooded by American films, because films co-produced by Americans could qualify as domestic productions in those countries. Co-production arrangements could quell both screen quotas, which reserve a portion of each theater's screen time for domestic films, and import quotas, which limit the quantity of competitive films brought in and made available to exhibitors. In addition, co-production arrangements could trim taxes and customs duties on the value of imported films.

28. Council Directive 89/552 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, 1989 O.J. (L 298) 23 [hereinafter Council Directive].

29. May 5, 1989, Europ. T. S. No. 132.

30. *Id.*; Council Directive, *supra* note 28, art. 4.

31. Council Directive, *supra* note 28, art. 6. If an EC partner is the minority co-producer but the work is still "mainly made with authors and workers residing in [the Community]," it will be considered to have European content in proportion to its European financing. *Id.*

32. *Id.* France, the Netherlands, the United Kingdom and Italy currently have quotas in effect.

33. James Ulmer, *Panel Bullish on Co-Productions in '90's*, HOLLYWOOD REP., Jan. 8, 1990.

III
Co-Production Rules and Arrangements

Canada, Australia, the United Kingdom, Italy, France, Germany, Japan, China, Norway and other countries have co-production treaties. These treaties provide that a film must meet certain minimum criteria for a "national" film in each co-production country to qualify as a co-production under the treaty.[34] Threshold criteria may include: (1) creative and financial contributions from each territory, which must be more than a minimum amount (usually 30%); (2) long-term cultural balance between the two countries' joint films; (3) studio shooting and lab work done in the territories; (4) local producers credited on screen; (5) most of the actors and creative elements originating from the countries involved; (6) musical compositions by a national of one of the countries and (7) source material and screenplay writers of the requisite national origin. A leading actor or "auteur" director from a third country may be used, if deemed "essential to the success of the film," and if the national commission or agency administering co-production so allows.[35]

An analysis of *The Crying Game* demonstrates how co-production rules are satisfied. The movie was shot both in Northern Ireland and London, England, with creative and financial contributions provided by each territory. Director and writer Neil Jordan is Irish. Local producers Nik Powell, Stephen Woolley, Elizabeth Karlsen and Paul Cowan were credited on screen. The film employed actors from both Ireland and England, and England's Boy George sang the theme song. The lab work was done in England. Palace Productions, British Screen Finance and British Channel Four partially financed the film. With this collaboration, enough Irish and British components existed to qualify *The Crying Game* as a co-production.

A. France

France's powerful interventionist government policy for film development and production has helped generate the biggest film indus-

34. These descriptions are cursory and dated. Therefore, before launching a co-production, a producer should check with appropriate counsel. Also note that there are always exceptions to the co-production rules.

35. Nigel Sinclair, *US/Foreign Film Funding; Co-Production Tips*, ENT. L. & FIN., Mar. 1991, at 1. Examples of agencies administering co-productions include the Centre National de la Cinematographie in France, the Department of Trade and Industry in the UK, the Ministry of Education in Italy, the Australian Film Commission, and Telefilm in Canada. Generally, the UK and German agencies take a more expansive view toward integration of international elements into local industries.

try in Europe. France produces more films per year and engages in more co-productions than any other European Community country.[36]

The Societes de Financement du Cinema et de l'Audiovisuel (SOFICA) is a French government-approved tax-sheltering company designed to attract investment for film and television production.[37] The French government provides tax incentives for individuals who have their main tax residence in France and who make qualified investments in a SOFICA. These incentives include a 100% deduction for the amount of a cash contribution to a SOFICA, up to a maximum of 25% of the taxpayer's income.[38] The taxpayer, however, may not transfer his shares in the SOFICA for five years, without the risk of losing the tax benefit.[39] Corporate investors in SOFICAs can subject 50% of their cash contributions to depreciation and amortization.[40] If the company holds more than 25% of the share capital of a SOFICA, it will lose the tax deduction.[41] Moreover, if the company dissolves or decreases its capital, the French Ministry of Finance can order the reinstatement of the amounts previously deducted.[42] The SOFICA, in turn, uses the funds invested in it to finance films that meet its production criteria.

The criteria defining films as officially "of French origin," which previously only included films shot in French, was recently broadened to include foreign language films.[43] However, SOFICA still insists that films be shot in the language of the main co-producer to receive SOFICA backing. Recent majority United Kingdom productions of *Damage*,[44] *Prague*[45] and *1492: Conquest of Paradise*[46] could have

36. *Europe's 2,300 features*, *supra* note 12.

37. SOFICAS Opened up to Foreign-Language Films, SCREEN FIN., Jan. 27, 1993. [hereinafter SOFICAS].

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. SOFICAS may now invest up to 20% of their annual production funds in "co-productions shot in the language of the country of a majority co-producer of EC nationality." *Id.*

Coincidentally, the Centre National de la Cinematographie proclaimed French majority co-productions need to be filmed in French to be eligible for subsidies. This requirement pertained to qualifying for the 40% French origin quota that French broadcasters must observe for non-news and current affairs programming. *Id.*

44. (Nouvelles Editions de Film (NEF) (France), Skreba Damage (United Kingdom), with funding from Canal Plus, Channel Four and European Co-Production Fund 1992).

45. (Constellation (France), Scottishfilm, and Christopher Young Productions, with additional funding from BBC Films, British Screen Finance and Union Generale Cinematographic (UGC) 1992).

46. (DueWest Productions (U.S.A.), Pere Fajes (Spain), Legende, CRYK 1992).

benefitted from SOFICA backing as non-French language films had this change been implemented when they were produced.[47]

Nonetheless, other French content requirements remain. A "French or European Production" must involve a French production company or a subsidiary of a foreign company incorporated in France that has a French manager. The creative, artistic and technical crew must be French or from a European Community country, and at least 50% of the production expenses must be incurred in France.

To qualify for the SOFICA program as an "International Production" or co-production, a project must have at least 20% of its production costs contributed by French financing, and the number of French or European Community artists involved must be directly proportional to the amount of the French or European Community financial contribution. In addition, at least 20% of the production expenses must be incurred in France. Although it is possible for an American producer to work with a French producer and qualify for co-production status, the SOFICA system has a strong resistance to Hollywood films.[48]

In addition to the SOFICA program, France provides FFr. 1.6 billion a year to back new films from levies of 11% on cinema tickets, 5.5% on television stations turnover, and 2% on video distributors turnover.[49] The government also provides FFr. 600 million a year to aid screenwriters, promote cinema studies, copy films, and renovate theaters.[50] The French broadcasting quotas provide that EC produced programs must fill at least 60% and French programs must fill at least 40% of television stations' prime airtime.[51] France also provides an *avance sur recettes* (advance on receipts) to films based on artistic merit and to selected films by first time directors.[52]

Although the film *Damage* did not qualify for SOFICA backing, it qualified as a co-production and illustrates how French co-productions may be formed. *Damage*, a £6.6 million Anglo-French co-production between Nouvelles Editions de Films of France, director Louis Malle's company, and Skreba of the United Kingdom, presents

47. SOFICAS, *supra* note 37.

48. *Id.*

49. David Buchan, *Lights, Camera—Reaction: France's Film Industry Fears a Loss of Identity if Culture is Included in GATT*, FIN. TIMES, Sept. 18,, 1993, at 7. France has an automatic box-office subsidy, which levies a tax on cinema tickets to provide a subsidy for qualifying French producers. This subsidy can be as high as 15% of the budget of a film, paid retroactively to the individual production company. *French Film Production Shows Slight Rise in 1991*, SCREEN FIN., Feb. 12, 1992 [hereinafter *French Film*].

50. Buchan, *supra* note 49, at 7.

51. *Id.*

52. *French Film*, *supra* note 49.

an illicit and steamy affair between Member of Parliament Stephen Fleming (Jeremy Irons) and his son's fiance Anna Barton (Juliette Binoche). Since Louis Malle wanted control over the film, without United States studio involvement, financing came from European sources. British Channel Four contributed 10% to the budget, and British Screen also contributed a sizeable amount.[53] British Screen's separately administered European Co-Production Fund contributed £500,000 to the budget.[54] Other backing for *Damage* came from the French cable company Studio Canal Plus (equity investment), British Channel Four (equity investment and United Kingdom television rights), New Line Cinema (North American distribution rights), Entertainment Films (United Kingdom theatrical and video rights), Nef2 (German distribution rights), Penta (Italian distribution rights), Cine-Saison (Japanese distribution rights) and Pyramide (French distribution rights).[55]

B. Germany

Germany, like France, provides relatively large sums of public money for film production, both from the central government and from regional sources.[56] The Federal Interior Ministry makes direct grants for film productions, and the Filmforderungsanstalt (FFA) provides aid for scripts, short films, children's films and documentaries. New films may receive interest-free loans of up to DM 500,000, or up to DM 1 million for products of exceptional value. The maximum for subsidies of screenplays is DM 20,000, and the maximum for exceptional works peaks at DM 50,000.[57]

Unlike other countries, Germany also has regional and state subsidies available to a producer.[58] The German Film Support Act mandates that for a film to be eligible for a state subsidy, it must be directed by someone "from a German cultural background." The sub-

53. *Sweet 16 Nominations, Britain's Channel 4 is on a (Bank) Roll*, L. A. TIMES, Mar. 28, 1993, Calendar, at 30.

54. *UK Feature Film Production, January 1 to June 30, 1992*, SCREEN FIN., July 1, 1992.

55. *British Screen Finance Slate of Films for 1992*, SCREEN FIN., Jan. 29, 1992.

56. *Paris, Texas* (Road Movies Filmproduktion (West Germany)), Argos Films (France), Westdeutscher Rundfunk (WDR) (West Germany), Channel Four (Great Britain), Pro-ject Filmproduktion (West Germany) 1984) was partially financed by a German national subsidy. *State and Screen: Germany*, SCREEN DIG., Oct. 1991 [hereinafter *Germany*].

57. *Id.*

58. State subsidies can be substantial; in 1987, Berlin subsidized $12 million in productions, and Munich provided $9 million. These sources are sometimes cultural, meaning that foreigners would need the support of national co-production treaties.

sidy is usually in proportion to German participation in the project.[59] In contrast, award of funds from regional sources may be based purely on economic criteria, open to any outside party willing to bring production into the area. In addition to state, federal and regional funds, German television companies often contribute additional funding to films eligible for German subsidies.

Although eligibility for German tax incentives and subsidies is not based on a "nationality" or a "national content" test, the production should at least have Germans as director, featured performer and crew.[60] A German producer or production company must be involved, although an American producer could co-produce with a German producer, who could then apply for the subsidy. German tax law provides an immediate deduction for the production investor for the full cost of producing a film. If, after several years, the investors are bought out, the full amount of gain to them could be tax free, but the buy-out cannot be implicitly or explicitly determined at the time of the investment.[61]

German co-production treaties exist with France, Greece, Israel, Italy, Sweden and the United Kingdom, but not with the United States.[62] Producers rarely use these treaties due to the problems in meeting the criteria of the cultural content point systems[63] required for films to qualify as co-productions. Although the "purely economic" regional funds appear to offer a foreign producer relative freedom, the German producer-partner will need to use the co-production treaty if she wishes to access additional state funds.[64] As in France, state money can be provided to the domestic partner in an international co-production only when the parties concerned use the provisions of the official co-production treaty.

The film *Elenya*[65] illustrates a recent German co-production arrangement. Germany's Frankfurter Film, Welsh Channel Four (S4C)

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59. *European Co-Production Treaty Nears Completion*, SCREEN FIN., Feb. 25, 1992. The cultural co-operation committee of the Council of Europe, which is structuring the European film co-production convention, believes rules governing individual national subsidies should avoid being as exclusive as the German scheme. *Id.*

60. MOORE, *supra* note 26, at 1507.

61. *Id.*

62. *Germany*, *supra* note 56.

63. Such point systems award points to films for various elements of the film that use resources and personnel of the specific countries involved. If enough points are acquired under the system, a production will qualify as a co-production. For a further discussion of cultural content point systems, see *infra* text accompanying notes 74-75, 133.

64. One example of state support is that from the FFA, which may finance up to one-third of a film's budget.

65. (Persona Films Ltd., Frankfurter Filmproduktion, British Film Institute, Ffilmian Llifon for S4C (Wales), Zweites Deutsches Fernsehen 1993).

and the British Film Institute (BFI) co-produced the feature film *Elenya*. *Elenya*, the story of a German pilot who is shot down in Wales during World War II and is befriended by a young girl, did not use German regional subsidies. Instead, Frankfurter Film made use of the Luxembourg government's audiovisual incentive programs, whereby the cost of productions shot in Luxembourg may be deducted by the producers from their tax liability. Thus, a large portion of the money invested in *Elenya* was recouped from the authorities as part of the original deal. *Elenya*'s budget of £740,000 was provided by Frankfurter Film. It was paid a production fee, gave a small equity contribution and took German theatrical and video rights. The bulk of the backing for the film came from BFI in conjunction with S4C. BFI provided £200,000 as a minimum guarantee for sales rights, plus a sizeable contribution for equity and all non-Welsh UK rights. S4C's contribution was divided between equity participation and all Welsh rights. The German broadcaster ZDF provided £70,000 against German television rights.[66]

Elenya demonstrates the complications that are likely to arise when structuring co-productions. *Elenya*'s co-production contract among the partners stipulated that there had to be both an English and a Welsh version of the film. These were shot back-to-back by the mixed English, Welsh and German crew, adding to the time, cost and strain of production.[67]

C. Canada

In Canada, qualifying co-productions can be entitled to the tax incentives and financial support that native Canadian films receive. These include eligibility for government financial support from Telefilm Canada and from provincial agencies; access to tax shelter financing pursuant to the 1941 Tax Act; and qualification for the "Canadian content" designation established by the Canadian Radio Television and Telecommunications Commission (CRTC), the body that administers the Canadian Broadcasting Act.[68]

Telefilm Canada grants financial assistance to Canadian film and television productions with significant Canadian creative, artistic and technical components. Additional criteria may be imposed to gain ac-

66. *BFI takes European Co-Production Route*, SCREEN FIN., Aug. 12, 1992.

67. *Id.*

68. David B. Zitzerman & Michael A. Levine, *The Canadian Advantage: The Benefits of Producing a Film in Canada*, 2 ENT. LAW. 48 (1992).

cess to specific funds.[69] Telefilm Canada has provincial counterparts that also provide support for qualifying Canadian productions.[70]

Formerly, if the film qualified as an official Canadian co-production, the investor could deduct the cost of producing the film over two years as a tax shelter.[71] However, the 1991 Canadian Tax Act rules reduced the accelerated capital cost allowance for "certified productions" to an annual rate of 30%, calculated on a declining balance basis which substantially reduced available depreciation deductions.[72]

The Canadian Audio-Visual Certification Office certifies a production if it is "produced in accordance with the provisions of an international co-production agreement between Canada and another country,"[73] or if a Canadian produces the film or tape and accumulates at least six out of a possible ten "points."[74] Points are allocated for a film's use of a local director (2 points), screenwriter (2 points), local stars (leading and second leading performers worth 1 point apiece), art director (1 point), director of photography (1 point), editor (1 point) and music composer (1 point).[75] At least one director and screenwriter and at least one of the leading or second leading performers must be Canadian. The producer and all individuals fulfilling producer-related functions must be Canadian, although courtesy credits are allowed, for example, to an "executive producer."[76] In addition, at least 75% of the total expenditure on labor must be to Canadians and at least 75% of processing and post-production costs must be incurred in Canada.[77]

69. *Id.* at 53.

70. These include Quebec, Manitoba, Alberta, Ontario, British Columbia, Nova Scotia and Saskatchewan. *Id.* at 49.

71. This is Canada's Capital Cost Allowance tax incentive. In addition, the distributors of qualified films are allowed higher license fees. *State and Screen: Canada*, SCREEN DIGEST, Oct. 1991 [hereinafter *Canada*]. Australia uses a similar method. *State and Screen: Australia*, SCREEN DIG., Oct. 1991 [hereinafter *Australia*]. MOORE, *supra* note 26, para. 905.013, at 1508; Sinclair, *supra* note 35.

72. Zitzerman & Levine, *supra* note 68, at 51.

73. Canada has co-production treaties with nineteen countries, including Germany, the United Kingdom, Italy, and Australia, but does not have a treaty with the United States. The complete roster includes: Algeria, Argentina, Australia, Belgium, China, Czechoslovakia, France, Germany, Hungary, Ireland, Israel, Italy, Morocco, the Netherlands, New Zealand, Spain, Switzerland, the United Kingdom and Yugoslavia. *Canada*, *supra* at note 71. A co-production treaty with Japan is in the process of being negotiated. Sid Adilman, *Movie, TV Deal with Japan in the Works*, TORONTO STAR, Mar. 27, 1993, at K10.

74. MOORE, *supra* note 26, para. 905.013, at 1508.

75. *Id.*

76. *Id.*

77. *Canada*, *supra* note 71.

As a result of the quotas for Canadian programming established by the Canadian Broadcasting Act and because of the paucity of Canadian programming, broadcasters are often willing to pay top dollar for qualified Canadian productions.[78] Under the Act, Canadian broadcasters must air minimum quotas of "Canadian programming" to maintain their licenses.[79] A production certified by the Canadian Audio-Visual Certification Office automatically qualifies under the rules promulgated by the CRTC for "Canadian content purposes." Uncertified productions may not fulfill the broadcasting quota criterion.

CRTC rules, however, allow for co-ventures not governed by international co-production treaties. When a Canadian co-produces with the United Kingdom or a French-language country, or when any bilateral production treaty so provides, the television production can still qualify for Canadian programming with only five points and 50% of labor, processing and post-production costs paid to Canadians to qualify as Canadian programming. Canadian subsidies remain available only to Canadian producers.[80]

Canada is relaxing its somewhat stringent standards to make itself a more appealing co-production partner. In 1989, The Films Co-Production Agreement was modified to allow the additional involvement of a third co-producer, provided the country of the third co-producer is a member state of the European Community or the British Commonwealth, or a country with which the United Kingdom or Canada has a co-production treaty. The additional co-producer must provide at least 20% of the film's budget.[81] The extended 1991 United Kingdom-Canadian treaty states that the U.K. and Canadian co-producer and any third co-producer "shall be required to make an effective technical and creative contribution . . . in proportion to their financial contribution," with a 20% floor for contribution to the total budget.[82] In addition, the new protocol formalizes and encourages "twinning." Under these new standards, Canada recently produced *Map of the*

78. Zitzerman & Levine, *supra* note 68, at 53.

79. *Canada*, *supra* note 71; Zitzerman & Levine, *supra* note 68, at 52.

80. *See Canada*, *supra* note 71 (offering examples of the many subsidies offered to Canadian producers for substantial quotas and restrictions).

81. *European Co-Production Convention to be Finalised in Autumn*, SCREEN FIN., Aug. 21, 1991 [hereinafter *European Co-Production*].

82. Protocol Amending the Films Co-Production Agreement, July 5, 1991, U.K.-Canada, 1992 Gr. Brit. T.S. No. 9 (Cmnd. 1807).

Human Heart[83] with the United Kingdom, New Zealand and Australia.

Naked Lunch,[84] an adaption of William Burrough's novel in which a pest exterminator injects some of his own insecticide, also benefitted from the new standards. Britain's Jeremy Thomas and Canada's David Cronenberg and Gabriella Martinelli produced *Naked Lunch*. It qualified as an official Canada-U.K. co-production under the treaty, and received production financing from Telefilm Canada and from the Ontario Film Development Corporation.[85]

D. Australia

The reduction of Australia's tax-relief program has made the Australian Film Commission's program for co-productions less appealing. Previously, division 10BA of the Australian Income Tax Assessment provided significant tax reductions to investors, contributing to the growth of the nation's film industry. This scheme allowed the investor a 150% deduction for capital expenditures in a qualifying Australian film. The investor could also receive a tax exemption on profits from the film of up to 50% of the original investment. In 1988, however, because the Australian government was experiencing huge tax losses, it reduced the deduction/exemption amounts to a 100% deduction of equal annual amounts over twenty-five years or duration of rights, whichever is shorter.[86] Since top marginal tax rates were reduced to 49% from 60%, 10BA became an unattractive mechanism for investors.[87]

The current tax scheme under section 51(1) of the Income Tax Assessment Act allows a 100% write-off over two years to the Australian motion picture investor. The film is not required to be an Australian-content film or to even be shot in Australia to qualify for 51(1).[88]

The Australian Film Finance Corporation (AFFC) investment group is now Australia's motion picture financing machine. The AFFC provides backing for qualifying theatrical and television features, mini-series and documentary films. The AFFC supports these

83. (Map Film Ltd., Polygram Pictures, Working Title (Great Britain), Meridian Films (Australia), Vincent Ward Film Productions (Australia/New Zealand), Sunrise Films (Canada), Les Films Ariane (France), with funding from Australian Film Commission, Nippon Herald Films, Channel 4, Telefilm Canada 1993).

84. (Naked Lunch Productions, Recorded Picture Co. 1991).

85. Zitzerman & Levine, *supra* note 68, at 50.

86. *Australia*, *supra* note 71; *Private Investors Steer Clear of Film Business*, SCREEN FIN., Sept. 20, 1990 [hereinafter *Private Investors*].

87. *Private Investors*, *supra* note 86.

88. *Id.*

productions with equity investments, production or print and advertisement loans, guarantees or a combination of these techniques up to 60% of the cost of production.[89] The AFFC may structure an equity participation and/or distribution rights as a return on investment.

To qualify as an Australian film, co-productions must embody significant Australian content or creative participation. The project must have at least 40% Australian personnel and financial equity, and the number of Australian personnel must be at least proportional to the Australian financial equity. The co-production must have a producer from each country that is providing financing.[90] The film must also qualify for 10BA certification, satisfying certain threshold requirements regarding Australian content and creative participation. This co-production program operates on a government-to-government basis, restricting the program to countries with national film commissions (*e.g.*, Canada).[91] Although the United States does not qualify for this program, an American producer may be able to utilize this co-production structure and access 10BA, 51(1) or AFFC funds through third countries such as the United Kingdom or Canada.

Australia currently has AFFC-administered co-production treaties with Canada, the United Kingdom, and negotiations are under way with Germany, Italy, Israel and the former Soviet Union. Recently funded AFFC international pictures include: *Green Card*,[92] *Sirens*[93] and *Map of the Human Heart.*

Generally, an overall balance of creative and financial contributions among national co-producers must exist for a film to qualify as an Australian co-production.[94] *Map of the Human Heart* demonstrated this balance. The film involves two "metis," or mixed race Eskimos, who meet as children in a Montreal Catholic hospital school and rediscover each other in London during the last stages of World War II. Avik (Jason Scott Lee), an aerial photographer, and Albertine (Anne Parillaud), a photo analyst, play the star-crossed lovers. Vincent Ward Productions of Australia, Canada's Sunrise Films, France's Les Films Ariane, and Working Title of the United Kingdom pro-

89. *Australia*, *supra* note 71.

90. *Id.*

91. *Id.*

92. (Touchstone Pictures, Green Card Productions, Walt Disney Home Video 1990).

93. (Samson Productions Two (Australia), Sarah Radclyffe Productions (Great Britain) 1994). *Sirens* is backed by British Screen Finance, AFFC and New South Wales Film & TV office. Blake Murdoch, *Duigan to Roll 'Sirens' Pic Down Under*, DAILY VARIETY, March 31, 1993, at 18.

94. Films Co-Production Agreement, June 12, 1990, U.K.-Australia, 1991 Gr. Brit. T.S. No. 9 (Cmnd. 1758).

duced this four-party co-production.[95] The picture qualified as an Australian co-production because it met treaty criteria, including embodiment of "significant Australian creative participation." Australian Vincent Ward produced, directed and co-wrote the screenplay. In addition, the performing, technical and craft contribution of the co-producers were in "reasonable" proportion to their financial participation, with each co-producer contributing at least 30% to the film financially and creatively. *Map of the Human Heart* also utilized producers from each country—Timothy White (Australia), Linda Beath (Canada), Sylvaine Sainderichin (France) and Graham Bradstreet (United Kingdom).

E. Japan

Japan's tax laws allow for favorable and rapid depreciation during the first two years of a film's life, with the possibility of the income being deferred over several years. Corporate profits are taxed at 50%, and investment in entertainment copyrights could result in tax savings for the investor, allowing a write-off of 78.5% of the investment against tax in the first year of the investment.[96] Although Japan is structuring treaties with countries like Canada,[97] private Japanese investors generally serve as financing tools for motion pictures, rather than as creative and technical co-production partners.[98] Private Japanese investors can benefit from tax breaks and subsidies their co-production partners receive.

Recent Japanese investments by Nippon Film Development and Finance (NDF), a private film-financing and brokerage company backed by a consortium of Japanese investors, include *Howard's End*,[99] *The Crying Game*, *Naked Lunch* and *Map of the Human Heart*.[100] NDF's shareholders, who have first option to individually invest in the projects presented to them, made a straight equity investment into a consortium founded and operated by NDF to partially finance *Howard's End* and *Map of the Human Heart*. NDF took Japa-

95. *European Co-Production*, *supra* note 81.

96. *Nippon Herald Film Investment Group Signs with European Producers*, SCREEN FIN., Nov. 14, 1990 [hereinafter *Nippon Herald*].

97. Adilman, *supra* note 73.

98. *Id.*

99. (Merchant-Ivory Productions (U.S.A.), Nippon Herald Films (Japan), Channel Four (Great Britain) 1992).

100. Adilman, *supra* note 73; *Nippon Herald*, *supra* note 96. The shareholders include Herald Ace, Sumitomo, Nippon Herald Films, Dai-Tokyo Fire and Marine Insurance, the Bank of Yokohama's venture capital arm, Bandai (a Japanese toy company), Yoshizaki and Iseki. *NDF Expansion May Help to Fill Some of the UK Finance Gaps*, SCREEN FIN., Sept. 9, 1992 [hereinafter *NDF Expansion*].

nese distribution rights in the films and a mixture of other distribution rights covering various Asian territories. These rights were then sold to NDF's distributor shareholders, Nippon Herald and Herald Ace.[101]

NDF partially financed *The Crying Game* by acting as an equity investor and using its own capital resources. To partially finance *Naked Lunch*, NDF acted as a broker for Japanese tax-incentive arrangements. Here, NDF exploited the difference between the rate of Japanese corporation tax and the entertainment tax allowances, allowing investors to write off corporate taxes against a percentage of their investment in entertainment copyrights.[102] NDF has been able to corner the market in tax-incentive deals,[103] since overall Japanese investments in film production have decreased as Japan's stock market, real estate market, and brokerage houses have become less profitable.[104]

F. United Kingdom

The United Kingdom has co-production treaties with Canada, France, Germany, Italy, Norway, Australia[105] and New Zealand.[106] The United Kingdom does not have a co-production treaty with the United States.[107] These treaties allow producers of a joint project to share the United Kingdom tax breaks and subsidies for films with commercial potential for theatrical release and television sales.[108]

The United Kingdom is not known as the most popular co-production partner.[109] The now-defunct Business Expansion Scheme previously allowed individual investors who held their shares for five years to immediately deduct certain amounts of money contributed to non-publicly traded corporations conducting business in the United

101. *NDF Expansion*, *supra* note 100.

102. *Id.*

103. *Id.*

104. *Id.*; Stan Soocher, *Recession Still Hovers Over Much of Industry; Mixed Expectations*, ENT. LAW & FIN., Aug. 1991, at 1.

105. *Co-Productions: Lots of Treaties, No Films*, SCREEN FINANCE, June 14, 1990 [hereinafter *Co-Productions*].

106. *Deal Close on UK-NZ Co-Productions*, SCREEN FIN., Dec. 11, 1991 [hereinafter *Deal Close*]; *More UK Films Go Before the Cameras but Investment Continues to Slide*, SCREEN FIN., Jan. 12, 1994.

107. *Deal Close*, *supra* note 106.

108. *Id.* A United Kingdom co-producer will be eligible for backing that would otherwise only be available for United Kingdom productions from British Screen, which receives government funding of £2 million a year. The United Kingdom-New Zealand treaty does not operate on a point system. Instead, it stipulates that the creative contribution of each country's resource should be roughly in proportion to its contribution to the budget. Monies for co-productions are dispensed by the Department of Trade and Industry. *Id.*

109. *Co-Productions*, *supra* note 105.

Kingdom.[110] With constrictions of the scheme, individuals could only write off investments of up to £40,000 at their top tax rate of either 25% or 40%, and a qualifying company could raise no more than £500,000 in a year.[111]

Some financing is available from British Screen Finance[112] which provides development and production support to the British film industry. With a direct grant of £2 million per year from the British government, it usually invests approximately £1.5 million in feature film production, with the remaining amount invested in feature film development or in production of short films.[113] The organization partially financed *Damage*,[114] *The Crying Game*, *Edward II*,[115] *Camilla*[116] and *A Pin for a Butterfly*.[117]

Financing is also available from British Screen's European Co-Production Fund (ECF), which has £6 million to invest in British co-productions with European companies until April 1997.[118] The ECF relies for the most part on government money, but does receive a return on investment from some of its films.[119] The ECF partially

110. MOORE, *supra* note 26, para. 905.011, at 1508. The government closed the Business Expansion Scheme (BES) on December 31, 1993. The proposed Enterprise Investment Scheme (EIS) has been designed as a partial replacement for the BES. The EIS will provide tax relief at only a 20% rate. Under the EIS, however, an individual can invest £100,000 over a 12 month period in EIS companies, and the amount that can be raised in a single issue has been increased to £1 million. Also, EIS will be open to overseas companies that intend to operate in the UK for a minimum of three years, with investments lasting five years. Like the BES, the investors' dividends and capital gains will be tax free with income tax and capital gains tax relief. *More Budget Disappointment for Film*, SCREEN FIN., Dec. 1, 1993.

111. *State and Screen: United Kingdom*, SCREEN DIG., Oct. 1991 [hereinafter *United Kingdom*].

112. British Screen Finance is owned by British Channel Four, MGM, Rank and Granada. *Lib-Dem Recipe for UK Film*, SCREEN FIN., Sept. 8, 1993.

113. *British Screen Set to Have 10 More for '93-'94*, SCREEN FIN., Sept. 22, 1993.

114. *Damage*, a $12 million co-production, was also backed by New Line Cinema, Nef2 of Germany, Penta of Italy and Le Studio Canal Plus, Cine-Saison and Pyramide of France. *Film Starts Pick up Slowly After Dismal January*, SCREEN FIN., Mar. 11, 1992 [hereinafter *Film Starts*].

115. (Working Title, Uplink 1991); *British Screen Sees Resource Rise in 1993*, SCREEN FIN., Feb. 24, 1993 [hereinafter *British Screen*].

116. *Camilla* was a £4.2 million co-production between Skreba and Shaftsbury Films of Canada, and is also being backed by Telefilm Canada and the Ontario Film Development Corporation, Majestic Films, and Channel Four. *Id.*

117. *Id.* Both are being developed by Skreba.

118. *Government Gives ECF a £6 Million Extension Over 3 Year*, SCREEN FIN., Dec. 1, 1993.

119. Returns on investment equated to £1 million in 1991-92, £2 million in 1992-93 and £2 million in 1993-94. *British Screen*, *supra* note 115.

funded *Damage* and *Orlando*,[120] *Sirens*,[121] *Friends*,[122] *The Hour of the Pig*,[123] *A Business Affair*[124] and *Camilla*, among other films.[125] The British government also provides about £2 million a year to Eurimages, the Council of Europe's co-production fund.[126] In 1993, the United Kingdom partnered sixty international co-productions.[127]

The withdrawal of the Eady Plan, which provided subsidies to certain qualifying English pictures, and the demise of its film-leasing arrangements and 100% capital allowances[128] have also reduced the popularity of the United Kingdom as a co-production partner. Although some producers may be interested in co-producing with partners from the United Kingdom because of the experience gained from working in the English language and with English-speaking crews, this does not compensate for the lack of government support. Allowing individuals and production companies to write off production expenses immediately against income, rather than having to wait three years after a film is completed, would provide added incentive.

Britain is known for its exceptional actors, actresses, directors, producers and films.[129] Despite this wealth of talent, the British motion picture industry is dying, a situation which British filmmakers deplore. In 1992, Britain made only 30 films, compared with 140 in France, where the motion picture business is heavily subsidized by the government.[130]

120. *British Screen*, *supra* note 115. *Orlando* was a $12 million co-production among UK's Adventure Pictures, Italy's Mikado Films, Rio of France, Sigma of the Netherlands, and Russia's Lenfilm. *See Film Starts*, *supra* note 114.

121. *Sirens* was a co-production with Australian Samson Productions. *British Screen*, *supra* note 115.

122. *Friends* was a co-production between Friends Production, Chrysalide Films and Channel Four of the UK and Rio of France. *Id.*

123. *The Hour of the Pig* was a co-production between the BBC and Ciby 2000 of France. *Id.*

124. *A Business Affair* was a co-production between UK's Film and General Productions, Cartel of Spain, Connexion of Germany and Osby Films of France. *Id.*

125. *Id.* *A Pin for a Butterfly* was a £1.65 million co-production between Skreba and the Czech production company Heureka Film, and was also backed by Channel Four. *Id.*

126. *Government Money for Eurimages and British Screen Boosts Film Industry*, SCREEN FIN., Nov. 18, 1992. Thus, Albania and Romania are the only Council of Europe members who do not subscribe to Eurimages.

127. *More UK films Go Before the Cameras but Investment Continues to Slide*, SCREEN FIN., Jan. 12, 1994. The U.K. partnered 43 co-productions in 1992. *Id.*

128. *Co-Productions*, *supra* note 105.

129. Amit Roy, *British Stars Keep Shining While Film Industry Fades*, SUNDAY TELEGRAPH, March 28, 1993.

130. *Id.*

IV
Council of Europe's Convention on Cinematographic Co-Production

As the above discussion illustrates, the differences among national co-production criteria and practices may generate confusion and missed opportunities. The Council of Europe's proposed multilateral European Cinematographic Co-Production Convention attempts to address these problems by making aid available to national films in any member country that is a party to the Convention, if a producer from any of those member countries is involved.[131]

The Convention, which opened for signing in October 1992, intended to replace existing European bilateral and multilateral co-production treaties. The Convention would effectively harmonize co-production rules with European Community law and provide a framework for rules applicable to all Convention participants.[132]

The Convention provides that a European film be in a language "culturally suited to the work." To qualify as a co-production, films must satisfy a number of conditions, assessed by a point system. A film must have at least fifteen out of a possible nineteen points to qualify as "European." Under the Convention, directors and screenwriters from signatory countries each generate three points and composers rate one. Lead actors command three points, second leads two and third leads one. The system also applies to technicians, with one point for the editor, one for the studio or outside location and one for post-production. The points system omits producers because the Convention applies only to co-productions involving at least three co-producers established in three different signatory states. Co-producers established in outside countries may also be involved, on condition that their contribution does not exceed 30% of the total production cost. The minority co-producer may contribute as little as 10% under the Convention, whereas the minimum in most bilateral agreements is 20% or 30%. A co-producer may also make a purely financial contribution not to exceed 25% of total cost, provided she has no say in artistic or technical matters.[133]

131. The subsidy would be made as a contribution towards the national producer's share of the budget, rather than the total budget of the film. *European Co-Production*, *supra* note 81.

132. *European Co-Production Treaty Nears Completion*, SCREEN FIN., Feb. 26, 1992 [hereinafter *European Co-Production Treaty*].

133. Council of Europe's European Convention on Cinematographic Co-Production, Oct. 2, 1992, Europ. T.S. No. 147.

The Convention tries to ensure that participants' rights are protected by requiring that each co-producer be given access to the negative of the film in order to make copies for commercial exploitation. The Convention also states that technicians established in the co-production countries must be used. Generally, the Convention rules attempt to ensure that films co-produced under the Convention have the "nationality" of each co-producing partner. For instance, a film co-produced by the United Kingdom, France and Italy will be considered British in the United Kingdom, French in France and Italian in Italy. This measure is vital for making co-producers eligible for national aid, and for bringing them under national agreements between film and television companies—which are major film consumers—and also may qualify them for additional tax breaks.[134]

The Convention needs only five ratifications to bring it into force and may even extend to countries other than the thirty-five states who are parties to the European Cultural Convention.[135] The Convention could be used as a model for a legal instrument governing co-production by independent film-makers in other countries.

However, the Convention is not a perfect document. The question of ownership of copyright will be considered at a future date.[136] Presently, the copyright ownership rights of the director and the writer take precedence over the producer's rights, according to the Berne Convention, which was endorsed by the European Commission through its directives.[137] This arrangement could adversely affect film financing, since producers need to have the power to fire directors or call for rewrites. The Convention also fails to address the issue of wide variations of the content and the nature of production contracts in European countries.[138] Nevertheless, the Convention remains a decent attempt to harmonize and promote European film production.

V
Conclusion

Foreign government funding and tax breaks have permitted the production of such films as *The Crying Game*, *Damage*, *Orlando*, *Blue* and *Sirens*. Many countries view co-productions as a means to battle Hollywood's dominance of the industry, by providing financing for films with smaller budgets. But the cultural, artistic and technical co-

134. *Id.*
135. *Id.*
136. *European Co-Production Treaty*, *supra* note 132.
137. *Id.*
138. *European Co-Production*, *supra* note 81.

operation involved in creating co-productions also supports and sustains national film production. The proposed European Convention could standardize European co-production mechanisms, and make the co-production process more fluid.